CLEAN AIR ACT AMENDMENTS OF 1977

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CLEAN AIR AMENDMENTS OF 1977

REPORT

OF THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE

TOGETHER WITH

ADDITIONAL VIEWS

TO ACCOMPANY

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protect and enhance air quality more than fulfilling the former role inadequately.

This act gives the States and communities new tools and more time which can be used effectively to achieve the objectives of the act. The resources and time must not be dissipated.

The bill is precise in its guidance for implementation of its provisions and thereby minimizes the need for additional Federal regulations. The bill sets forth a specific method by which clean air areas should be protected, the basic measure against which deterioration is to be determined, and the programs that States should have in place to prevent significant deterioration. This guidance is intended to supersede broad, unnecessary and perhaps conflicting regulations.

The Environmental Protection Agency must minimize any disruption that might be caused in implementing the act. It should not "rediscover the basis for the regulations, while modifying those regulations. A similar problem occurred after the enactment of the 1972 Federal Water Pollution Control Act. In that instance, the Agency frequently stopped programs completely while new regulations were drafted, revised, and promulgated. The effect of such a hiatus can be very detrimental to a program. The Agency must avoid any such pattern in complying with the 1977 air amendments.

In addition to the question of new emissions in areas exceeding national air quality standards (discussed in the preface) the legislation addresses four issues that are basic to the structure and integrity of the Clean Air Act: the prevention of significant deterioration, compliance deadlines, auto emissions standards, and transportation controls.

Prevention of significant deterioration.—The first major policy question involves the protection against significant deterioration of air that is already clean.

The 1967 Air Quality legislation required improvements in the quality of dirty air and protection of clean air against future deterioration. The 1970 act did not alter this policy. As a result of administrative and judicial decisions, the Environmental Protection Agency created a regulatory structure to protect air quality in clean air areas.

Presented with arguments ranging from a do-nothing approach to repeal, the committee determined that the implications of that policy and procedures are too vast to be left to the administrative or judicial process. Congress has a responsibility to delineate a policy for protecting clean air as it had a responsibility in the previous act to spell out the policy to restore clean air.

This legislation defines "significant deterioration" in all clean air areas as a specified amount of additional pollution. Specified Federal lands having unique air quality related values are further protected. This definition is intended to prevent any major decline in air quality currently existing in clean air areas and will provide a margin of safety for the future. This will be made easier by a mandatory use of the best available control technology as set forth in the bill.

This policy will be implemented by the States. Judgments will be made on a case-by-case basis, taking into account local factors. But in no case will deterioration be permitted to a level that would exceed any national ambient air quality standard.

The Administrator's role is one of monitoring State actions. States have authority to issue construction permits to new major emitting facilities in clean air areas. The Administrator thus could go to court to stop a permit for activities which would exceed the increments of pollution or which otherwise did not comply with the requirements of this section, including use of best available control technology. But the Administrator could not and should not attempt to burden this section with unnecessary regulations and guidelines.

The Administrator should tell the States the basis for his review. When asked, he should become involved at an early date in particularly difficult permit applications so that the States and localities will know of any potential differences. But under no conditions may he use this authority to force land use or site selection decisions unrelated to air quality.

The committee has also asserted a Federal interest in protecting air quality over certain areas of Federal ownership, by a separate test. The potential activity outside those Federal lands—such as national parks and wilderness areas and international parks—could be prohibited if it would impair the air quality values associated with those Federal lands.

The policy is clear: there is a uniform national standard against which deterioration is judged; there is a national requirement that each new major facility to be located in a clean air area install the best available control technology; and there is a national interest in the protection of air quality-related values in national parks and wilderness areas.

Compliance deadlines.—The 1970 act required that most sources of pollution achieve emission limitations related to public health standards by mid-1975, with one possible 2-year extension. While the majority of the Nation's 20,000 major sources of pollution are in compliance or on approved compliance schedules, several thousand major industrial sources will not meet the deadlines of the act.

After considering several approaches to deal with this problem the committee has concluded that the most effective way to handle these complexities is to require sources to comply as expeditiously as practicable, with no source delaying final compliance with applicable emission limitations imposed by the States beyond July 1, 1979. To establish equity among those who have complied and those who have failed, there will be an automatic penalty, once the delay period expires. The penalty is to be paid monthly and will be based on the amount needed to cancel all monetary benefits of not investing in pollution control.

Auto standards.—The 1970 act prohibited the sale of cars that were not essentially free of pollution by the 1975 model year. The Congress in the winter of 1973–74 extended for 1 year the date for attainment of the statutory automobile emission standards and authorized the Administrator of the Environmental Protection Agency to extend that deadline for 1 further year, if justified. At the time, the Administrator of EPA said there was no technical justification for the delay. But the Congress acted in part because of the potential danger of sulfuric acid emissions from cars equipped with catalytic converters. There appeared to be a need to evaluate the risk of sulfates before

Loss of Pay (Sec. 5(g))

SUMMARY

This section amends section 110 of existing law. It bars the loss of pay to workers that could result from the implementation of supplementary control systems for nonferrous smelters, as authorized in this legislation. Each State implementation plan which contains provisions for supplemental controls for a source must also include a requirement that no reduction in production can result in a loss of pay to the workers.

DISCUSSION

This provision is intended to prohibit any facility which uses supplemental controls from penalizing workers because of the control strategy it has chosen.

This provision can be met by the use of procedures incorporated in existing contracts between labor and management. Where no labor organization exists or where no such agreements exist, it is the responsibility of the State to include the enforceable provisions in the permit issued to individual sources using supplementary strategies.

The committee intends "loss of pay" to mean the normal rate of compensation to a worker, not any projected losses at overtime rates which may be paid at some times by the owner of the facility.

Requirement To Prevent Significant Deterioration (Sec. 6)

SUMMARY

This section adds a new subsection (g) to section 110 of existing law. Each State which contains an area in which the levels of sulfur oxides or particulates are better than any secondary air quality standards (or primary standard, if that standard is more stringent) for that pollutant must adopt and enforce as part of its implementation plan provisions to prevent significant deterioration of air quality.

Such protection is defined by maximum numerical pollution increments for sulfur dioxide and particulates, which can be added to existing levels of those two pollutants in designated areas. A second test of protection is provided in specified Federal land areas (class I areas), such as national parks and wilderness areas; these areas are also subjected to a review process based on the effect of pollution on the area's air quality related values.

The Environmental Protection Agency is required to study the establishment of such increments for other pollutants and to recommend within 1 year increments for stationary source emissions of nitrogen oxides and hydrocarbons.

All international parks regardless of size and each national memorial park and wilderness area, exceeding 5,000 acres, and each national park which exceeds 6,000 acres, which exist on the date of enactment are designated as class I areas. All other lands, including other Federal lands and new national parks and wilderness areas shall be designated class II areas, but may be redesignated class I by the State. The con-

currence of the Federal land manager is not required where Federal lands are involved.

Each new source with the potential to emit more than 100 tons of a pollutant per year and identified by category in the statute must apply to the State for a permit to construct a class II area. EPA is informed of the application and gives notice of it to Federal land managers and supervisors of potentially affected class I areas.

Any Federal land manager or supervisor of an affected class I area, or the Administrator of EPA, or a Governor of an adjacent State is authorized to notify the State of potential adverse impact on the air quality within the class I area with a statement identifying potential impacts from the proposed facility. If no such notice is forthcoming, the applicant is required only to meet best available control technology requirements as statutorily defined and show that the class II increment will not be exceeded.

If there is such notice, the applicant would be required to demonstrate whether the class I increments would be exceeded in the class I areas, and—

> If the permit applicant meets the class I increments, but the Federal land manager (not the supervisor) demonstrates to the satisfaction of the State that the applicant's emissions would nevertheless have an adverse effect on the air quality-related values of the Federal lands, the State must deny the permit; or
>
> If the permit applicant does not meet the class I increments but demonstrates, to the satisfaction of the Federal land manager (not the supervisor), that there would be no adverse impact on the air quality-related values of the Federal lands, the State may issue the permit.

In the event a dispute occurs over any development or activity in an adjacent State, the Governor of the affected State may request the Administrator to enter into negotiations. If this is not successful, the Administrator shall then resolve the dispute.

In the event that the emissions from any new major emitting facility will cause or contribute to a pollutant increase greater than a class II increment for such pollutant, the Administrator shall, and a Governor may, seek injunctive relief to prevent the issuance of a permit or construction of that facility.

DISCUSSION

A nondegradation policy was articulated first in Federal water pollution law. That was in 1965. The concept was incorporated into the 1967 Air Quality Act, which stated that a basic purpose of the act was to "protect and enhance the quality of the Nation's air resources." That language was not altered by the 1970 Clean Air Amendments. This bill clarifies and details that policy.

The Senate report in 1970 identified the tools necessary to implement a policy to prevent significant deterioration. The Senate report stated on page 11:

> In areas where current air pollution levels are already equal to, or better than, the air quality goals, the Secretary should not approve any implementation plan which does not

provide, to the maximum extent practicable, for the continued maintenance of such ambient air quality. Once such national goals are established, deterioration of air quality should not be permitted except under circumstances where there is no available alternative. Given the various alternative means of preventing and controlling air pollution—including the use of the best available control technology—industrial process and operating process—and care in the selection of sites for new sources, land use planning and traffic controls—deterioration need not occur.

The Environmental Protection Agency's predecessor for regulating air pollution, the National Air Pollution Control Administration, defined this policy with guidelines in 1969. In 1971, EPA initially proposed guidelines to prevent significant deterioration for air quality implementation plans, but this requirement was deleted from the promulgated guidelines. A court challenge followed.

On June 2, 1972, the U.S. District Court for the District of Columbia upheld the interpretation given by the 1969 guidelines, which stated that significant deterioration of air quality in any region was contrary to the language of the 1967 Act to "protect and enhance" air quality. That action was upheld by the circuit court of appeals and affirmed by the Supreme Court on a 4-to-4 decision, issued without written opinion on June 11, 1973.

EPA initially proposed regulations on July 16, 1973 outlining four alternative plans for the prevention of significant deterioration. Extensive agency public hearings were held and revised regulations were reproposed on August 27, 1974. Additional hearings were held throughout the country, and over 300 written comments were received before the final regulations were promulgated on December 5, 1974. Suits were immediately filed by industry and environmental groups challenging these regulations.

During hearings in 1974 and 1975 the committee was urged to clarify and resolve this issue through legislation, rather than leaving the matter to the courts. This section provides the statutory substance to the more general language in section 101(b) of the act, which articulates the concept of the prevention of significant deterioration. The committee intends in this new subsection 110(g) to completely define the requirements of the Clean Air Act to prevent significant deterioration. This section protects clean air areas from deteriorating while permitting the economic development necessary to achieve a steady improvement in our standard of living. In brief, this provision:

(1) places primary responsibilities and authority with the States, backed by the Federal Government;

(2) applies only to new major emitting facilities, not affecting existing facilities;

(3) requires that large new sources use the best available technology to minimize emissions, determined by each State on a case-by-case basis;

(4) provides as a margin of safety to protect national ambient air quality standards, assuring prudent consideration of any major emitting facility that may threaten that air quality;

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(5) requires the Federal Government, as a property owner, to protect the values related to air quality on certain Federal lands under the stewardship of various Federal agencies;

(6) eliminates the so-called "buffer zones" that were hypothesized around various land classifications; and

(7) affects only those areas where air quality is cleaner than the present primary or secondary standards.

The majority of the land mass of the United States has air quality cleaner than these ambient standards. Under existing law—irrespective of any nondegradation procedures—an industrial plant proposed to be built in such a "clean" area must demonstrate that it will not violate any national standard.

To define what significant deterioration is, with respect to sulfur oxides and particulates, the committee has incorporated in the bill a set of numbers—the so-called "increments"—that specify the allowable change in ambient air quality.

The national standard to prevent significant deterioration is this single set of increments, which are taken from EPA's regulations covering the agency's so-called class II areas. These are technical measures of the amount of total additional pollution that may be added to the ambient air by a single facility or series of facilities. These increments are the same for all nondeterioration areas, thus providing equity for all areas. The increment, of course, is measured from the baseline ambient air quality as defined in these amendments. The increment would thus be in addition to whatever levels of pollution exist from present sources, natural background, and other activities. The only exception occurs when pollution up to the increment would produce ambient air exceeding any primary or secondary standard. If that occurs, the full increment may not be used, and the national ambient standards set the ceiling for additional ambient pollution.

The bill contains increments for only two pollutants: particulate matter and sulfur oxides (calculated as sulfur dioxide). EPA, however, is required to study strategies to prevent significant deterioration for other regulated pollutants, and it is directed to inform the Congress of appropriate increments for hydrocarbons and oxides of nitrogen.

In addition to the protection of air quality, the incremental ceiling should serve as an incentive to technology, as a potential source may wish to push the frontiers of technology in a particular case in order to obtain greater productive capacity within the limits of the increments.

AMBIENT AIR QUALITY STANDARDS AND NO SIGNIFICANT DETERIORATION INCREMENTS

[In micrograms per cubic meter]

Pollutant	Primary standard	Secondary standard	Class II increment	Class I increment
Particulate matter:				
Annual geometric (mean)	75	60	19	5
24-hour	260	150	37	10
Sulfur dioxide:				
Annual arithmetic (mean)	80		15	2
24-hour	365		100	5
3-hour		1,300	700	25

In the long run, the growth potential of these clean-air areas may be quickly filled without a reasonable policy to prevent significant deterioration. The first new source built in an area would often absorb the entire available air resource, leaving no capacity for future expansion or growth.

Under the policy to prevent significant deterioration in this bill, the growth options should be enlarged. This is because the provision requires that any major source be constructed to utilize the best available control technology. This should usually leave room for additional growth.

The decision regarding the actual implementation of best available technology is a key one, and the committee places this responsibility with the State, to be determined in a case-by-case judgment. It is recognized that the phrase has broad flexibility in how it should and can be interpreted, depending on site.

In making this key decision on the technology to be used, the State is to take into account energy, environmental, and economic impacts and other costs of the application of best available control technology. The weight assigned to such factors is to be determined by the State. Such a flexible approach allows the adoption of improvements in technology to become widespread far more rapidly than would occur with a uniform Federal standard. The only Federal guidelines are the EPA new source performance and hazardous emissions standards, which represent a floor for the State's decision.

This directive enables the State to consider the size of the plant, the increment of air quality which will be absorbed by any particular major emitting facility, and such other considerations as anticipated and desired economic growth for the area. This allows the States and local communities to judge how much of the defined increment of significant deterioration will be devoted to any major emitting facility. If, under the design which a major facility propose, the percentage of the increment would effectively prevent growth after the proposed major facility was completed, the State or community could refuse to permit construction, or limit its size. This is strictly a State and local decision; this legislation provides the parameters for that decision.

As part of the required procedure, the State must establish a permit program to regulate construction of new major sources in these clean-air areas. The bill defines major emitting facilities for this purpose as any source that falls into one of 28 industrial categories listed in the bill, if the source would also have the potential to emit more than 100 tons of any pollutant per year. If a source falls in a category listed but would be smaller than the 100 tons per year figure, it is not subject to the procedures in this act. EPA has the authority to add to the list of industrial categories. The State, of course, may use this review procedure for additional categories of sources.

Similarly, when an analysis of energy, economics, or environmental considerations indicates that the impact of a major facility could alter the character of that community, then the State could, after considering those impacts, reject the application or condition it within the desires of the State or local community. Flexibility and State judgment are the foundations of this policy.

The chief tool to be used in implementing the no-significant deterioration requirements is the permit that must be issued by the State for any major emitting facility to be located in any clean-air area, including Federal lands. The permit must include an emission limitation based on best available technology. It must insure that total emissions from the facility are such that the increments will never be exceeded. The application for a permit must include careful analyses of climate and meteorology, the soils, the vegetation, the visibility, and other environmental factors at the proposed site and in the area that might be affected by the emissions.

In studying the permit application, the State must examine the growth associated with any proposed facility in terms of other industries that might be attracted to the area and associated with the facility, and its effect on support services, and the residential, commercial, and transportation needs accompanying the facility.

Inherent in any review-and-permit process is the opportunity for delay. The committee does not intend that the permit process to prevent significant deterioration should become a vehicle for inaction and delay. To the contrary, the States and Federal agencies must do all that is feasible to move quickly and responsibly on permit applications and those studies necessary to judge the impact of an application. Nothing could be more detrimental to the intent of this section and the integrity of this act than to have the process encumbered by bureaucratic delay.

Major emitting facilities which commence construction after June 1, 1975, are required to receive a permit under this provision.

The amendments provide a definition of when a major emitting facility can be said to have "commenced construction." This definition was adopted to allow a determination as to whether any particular facility is subject to the review and other requirements of the provisions for the prevention of significant deterioration. The date at which construction is said to have commenced is the time at which the owner or operator has obtained all necessary preconstruction approvals or permits required by Federal, State or local laws and has committed itself to a program of construction. The test of commitment is whether physical on-site construction has begun or whether the owner or operator has entered into contractual obligations which cannot be canceled or modified without substantial loss. The committee does not expect that this test will necessarily be met by penalty clauses in contracts. Rather, the committee intends a factual determination as to whether a source has so committed itself, financially and otherwise, to the use of a particular site for a particular facility that relocation is not an option and delay or substantial modification would be severely disruptive.

This definition represents a change from the policy which the Environmental Protection Agency followed during 1975. The definition of "commenced construction" used at that time excluded from coverage under the regulations those sources which had entered into binding obligations before June 1, 1975, whether or not construction had actually begun or whether there would be any substantial loss if the contract was canceled or modified. Some sources, in fact, received assurances from the Environmental Protection Agency that their

proposed construction would not be subject to review under the regulations for the prevention of significant deterioration. Relying on those assurances and the previous interpretation of the definition of "commenced construction," some of those sources have actually changed their position and commenced construction since June 1, 1975, committing substantial sums on the assumption they would not be subject to review under the significant deterioration regulation.

The new definition of "commenced construction" contained in these amendments is intended to subject many sources to the requirements of section 110(g) who previously would have been exempt on the basis of a contractual obligation entered into before June 1, 1975. The committee believes it is appropriate to require review of facilities which have not actually begun construction or so changed their position as to risk substantial loss if the project is canceled or modified. Most contracts for utility boilers and oil storage tanks fit this description; while orders for such boilers and tanks are placed far in advance of actual construction, the fabrication of the boiler or similar equipment does not begin, and the risk of loss incur, until only a few years before the date of operation. Even then the fabrication of a boiler or other equipment does not mean that the site of the plant has been fixed.

Where a source has received formal written statements from the Administrator of the Environmental Protection Agency, or the Administrator's designee, stating that the source in question would not be subject to review because of contractual obligations entered into before June 1, 1975, and where the source in reliance on such statements has subsequently (and before the enactment of this act) qualified under the new definition of "commenced construction," that source could be exempt from review.

The committee intends that in order to qualify for this interpretation the source must have received all appropriate preconstruction approval or clearance from the State for the construction of the facility at a particular site, in accordance with State law. The test of reliance on that approval or clearance is whether the source has committed itself to that particular site for the particular facility in question so that a change in location would result in a substantial loss. To qualify for this interpretation, a source must also have a projected date of operation for the facility (or, in the case of an integrated multi-facility plant, such as a steel mill, a key facility of such plant) early enough that to subject it to review would be severely disruptive. This interpretation, which the States should consider in determining whether individual sources are subject to the requirements of section 110(g) should allow those sources which have committed substantial sums in reliance on the earlier interpretations to complete their planned construction.

Section 110(g)(4)(C) exempts smaller, well-controlled sources which are expansions of existing facilities from having to demonstrate compliance with the class II increments. Many such sources which are small and relatively insignificant with respect to air quality would otherwise be brought under the requirements of section 110(g) by the "major emitting facility" definition of 100 tons per year potential emissions of any pollutant.

The bill provides that any expansion of an existing source whose total emissions, after the use of best available control technology, will be less than 50 tons per year is exempt from the class II increment requirement.

Any such source which is a major emitting facility continues to be required to (a) undergo a permit review, (b) use the best available control technology, (c) meet the secondary ambient air quality standards, and (d) if close to a class I area, protect the air quality-related values of that area.

Much attention has been devoted inside and outside the committee to land classification. The committee rejected a national policy that some clean air areas should be set aside for industrial development where deterioration to the national ambient standards would be allowed, as under EPA's class III areas. The committee also rejected as national policy a mandate to establish pristine areas where no change in air quality would be allowed. The committee did establish a second test to provide additional protection for air quality in areas where the Federal Government has a special stewardship to protect the natural values of a national resource. Such areas are the federally-owned class I areas under the bill.

All international parks without regard to size and, all national memorial parks, and national wilderness areas in excess of 5,000 acres and all national parks in excess of 6,000 acres that exists on the date of enactment of this bill, shall be designated as class I areas. The reference to national parks is only to those lands denominated as "national parks," not to all elements of the National Park System.

Other valuable resource areas, such as national monuments and national recreation areas should be reviewed to determine the appropriateness of moving any of these areas from the automatic class II designation to class I. A number of types of lands in these categories might well qualify for designation as class I. The appropriate Federal land manager should review these lands and recommend to the appropriate State any proposed redesignations for State consideration. States are also encouraged to conduct a similar review.

The term "Federal lands," as used in this bill, holds its traditional context, and implies no new departure from definitions or systems of classifying Federal lands and land-related rights.

In addition to the class I areas specified in the bill, the State may designate any other areas, including Federal lands, as class I areas, or as any other classification more stringent than the class II classification. No concurrence by the Federal land manager is required. A hearing would be required before such designation could take effect. The procedural requirements would be the same as those for other modifications in State implementation plans. The authority for redesignation only allows redesignation more stringent than the class II designation; no classification less stringent than class II is authorized.

For the purposes of redesignating classification of nondegradation lands to class I classifications, Indian tribes are given the same powers as States. The appropriate Indian governing bodies of federally recognized Indian tribes are authorized to redesignate any portion of their lands as class I areas. Any adjacent State which disagrees with the designation of any such class I area by an Indian tribe can initiate

the procedure established under section 110(d)(10). The Administrator has ultimate authority to resolve the dispute. This is the same authority that exists for resolving any classification dispute among States.

Under existing EPA regulations, Indian tribes are authorized to designate any of their lands as class I areas. If any such designations are approved by EPA prior to the enactment of these amendments such redesignation to class I status shall not be altered by the passage of these amendments. Such a request by the Northern Cheyenne Tribe is pending and may be approved before enactment.

Much confusion has occurred regarding the buffer zones that supposedly encircle these class I areas. The committee has eliminated any buffer zones by setting the class I increment as a flexible test. The class I increment is a test for determining where the burden of proof lies and is an index of changes in air quality. It is not the final determinant for approval or disapproval of the permit application.

Most sources will only have to model for the class II numbers and provide data to demonstrate that it will not exceed the increment governing the class II area. The exception occurs when there is reason to believe a source may damage the air quality associated values of a class I area. The State, on receipt of any application for a permit, is required to publish a notice of the application and to inform the EPA. EPA would then give notice to Federal land managers and to the supervisors of any class I Federal lands in the areas that might be affected.

The Federal land manager, or the supervisor of a class I area, or the Administrator of EPA, or a Governor of an adjacent State with a class I area, is authorized to notify the State that the proposed source poses a potential adverse impact on the quality of the air within the class I area. A statement identifying the potential impacts of the proposed facility would be filed. The bill charges the Federal land manager and the supervisor with a positive role to protect air quality values associated with the land areas under the jurisdiction of the Federal land manager. This means that such officials must seriously consider whether a proposed facility might adversely affect the lands for which they are responsible. If either of them believes there is any risk of such adverse effect, that official should notify the State and initiate the class I analysis. This affirmative responsibility to protect the air quality of Federal lands may involve court challenges for inappropriate permits and facilities constructed without permits, as well as participation in the permit consideration administrative process.

When no such notice is forthcoming from a Federal lands official, the Administrator, or a Governor, the applicant would adhere to the regular requirements for the class II areas, with best available control technology.

When notice is filed, the applicant must demonstrate whether or not the class I increments would be exceeded in the class I areas. If they are met, but the Federal land manager, not the supervisor, nevertheless can demonstrate to the satisfaction of the State that the emissions would still have an unacceptable adverse effect on the air quality-related values of the class I Federal lands, then the State must refuse to issue a permit.

If, on the other hand, the permit applicant demonstrates, to the satisfaction of the Federal land manager, that there would be no unacceptable, adverse impact on the air quality related values of the class I Federal lands, notwithstanding the fact that the class I increments would be exceeded, the State may issue the permit.

Each case of suspected class I intrusion must be analyzed on an individual basis, with the decision on whether or not a permit is issued resting with the State. The Federal land manager holds a powerful tool. He is required to protect Federal lands from deterioration of an established value, even when class I numbers are not exceeded. And whenever they are, he must be satisfied by the applicant that the air quality values of Federal lands will not be impaired, and certify to that effect before the State may issue a permit.

No land use plan is required under the requirements to prevent significant deterioration. States will comply by amending their existing Clean Air Act implementation plan. If a State fails to adopt such an amendment, no major emitting facility can be constructed in the areas of the State identified as cleaner than any existing standards. The Federal Government's role under the provision to prevent significant deterioration is far less extensive than under provisions required to achieve the primary and secondary standards under the Clean Air Act.

The committee intends a sharply restricted role for the Environmental Protection Agency in regard to implementing the policy to prevent significant deterioration. EPA is limited to (1) approving the new source review process established by the State; (2) seeking injunctive relief or other measures that would be necessary to prevent the issuing of a permit for a new source if it does not comply with the requirements of the subsection; (3) resolving interstate disputes; and (4) notifying a State when it believes adverse impact may occur in a class I area. Once the State submits an adequate amendment to its plan, the Environmental Protection Agency role is restricted to assuring compliance with the law.

While the general scope of the Federal Government's activities in preventing significant deterioration has been carefully limited, the Federal land manager should assume an aggressive role in protecting the air quality values of land areas under his jurisdiction. This will trigger analyses of air quality impact of proposed development where there is reason to believe an adverse impact might occur. The Federal land manager is expected to request such analysis under the notification steps provided in the bill when there is reason for concern. In the case of doubt, the land manager should err on the side of protecting the air quality-related values for future generations.

As used in paragraph (5) (B) and (C), the term "air quality related values" of Federal lands designated as class I includes the fundamental purposes for which such lands have been established and preserved by the Congress and the responsible Federal agency. For example, under the 1916 Organic Act to establish the National Park Service (16 U.S.C. § 1), the purpose of such national park lands "is to conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations."

Much of the controversy concerning this bill has grown from studies of the effects of the policy to prevent significant deterioration. The Environmental Protection Agency and the Federal Energy Administration jointly analyzed alternative approaches to preventing significant deterioration in a two-volume study in October 1975, "An Analysis of the Impact on the Electric Utility Industry of Alternative Approaches to Significant Deterioration." Four supplements to that study have since been published.

Extensions for Oxidant and Carbon Monoxide Control (Transportation Control Plan Revisions) (Sec. 7)

SUMMARY

This section amends section 110 of existing law by adding a new subsection (h).

A State must submit a revised implementation plan for any region which will not attain the ambient standard for oxidants or carbon monoxide.

As part of the revision a State must submit to the Administrator transportation control provisions, prepared where possible by an organization of local elected officials designated by the State. The plan must provide for the attainment of the primary ambient air quality standards as expeditiously as practicable but no later than July 1, 1982, unless such attainment is not possible through the implementation of all reasonable and available control measures.

In such a case, the Governor must submit a revised plan by July 1, 1982, which provides for attainment no later than July 1, 1987.

Grants shall be available for two years to any designated local transportation or air quality planning organization, for 100 percent of the additional costs of developing a transportation control plan.

The Secretary of Transportation shall not approve any projects or award any highway funds after January 1, 1979, to a State which is not meeting the oxidant or carbon monoxide standard and which has not submitted a revised implementation plan by January 1, 1979.

In the event that an area does not implement a requirement of an approved plan, the Secretary shall cumulatively decrease by 15 percent annually the funds for any project approved by him.

No agency of the Federal Government shall support in any way an activity not in conformance with a plan requirement. All Federal programs with air quality-related transportation effects shall give priority to the implementation of transportation control measures.

DISCUSSION

Existing law requires that State plans impose emission limitations and other measures to achieve that level of air quality necessary to protect public health and public welfare. One of the measures listed in the 1970 Act was "transportation controls".

The Administrator initially allowed States to put aside development of transportation control plans. That action was overruled by the U.S. Court of Appeals for the District of Columbia on January 31, 1973. States adversely affected by mobile source related pollutants were

the no-significant-deterioration review, provided that the plant also has the potential of emitting at least 100 tons of any pollutant yearly.

The list, growing out of the EPA list of no-significant-deterioration regulations, is limited to the following categories: fossil-fuel fired steam electric plants of more than 250 million British thermal units per hour heat input, coal cleaning plants (thermal dryers), kraft pulp-mills, portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than 250 tons of refuse per day, hydrofluoric, sulfuric and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production facilities, chemical process plants, fossil-fuel boilers of more than 250 million British thermal units per hour heat input, petroleum storage and transfer facilities with a capacity exceeding 300,000 barrels, taconite ore processing facilities, glass fiber processing plants, and charcoal production facilities.

The Administrator is given full flexibility to include additional categories where he believes it necessary to implement effectively the intent of the no-significant-deterioration provision.

The Environmental Protection Agency has a much more extensive list of categories of sources of pollution than the list contained in the bill. The Agency is directed to examine that list for additional sources which will have significant total national emissions or emissions which may result in significant local problems. Any such categories should be added to those identified in the bill.

The committee did not include asphalt-batch plants in the list, recognizing that many such plants are mobile and can be transported from site to site for construction work. This would appear to create a difficult burden for review and permitting. But because the committee notes that a typical 150-ton-a-day asphalt plant has the potential to emit 1,700 tons of pollution yearly, the Administrator should examine this category carefully to determine if at least those asphalt plants that are stationary should be reasonably included as major emitting facilities.

BASELINE AIR QUALITY CONCENTRATION

The increment available in clean air areas under the section 110(g) requirements for the prevention of significant deterioration is to be added to existing baseline concentrations. The baseline is defined as the concentrations which exist at the time the first applicant for a permit in an area files that application. If there are sources in the area which have commenced construction after January 6, 1975, the emissions from those sources (even if such source has completed construction and is presently operating or emitting pollutants) shall not be included in the baseline, but deducted from the increments applicable to the area. This of cource does not include facilities built as replacements for sources in existence before January 6, 1975. Only the emissions from such replacement facilities in excess of those from the source replaced would be deducted from the increment. If the source

has commenced construction prior to January 6, 1975, then the emissions shall be included in the baseline, even if the source has not completed construction and is not in operation. January 6, 1975, was the date when EPA's regulations for the prevention of significant deterioration became effective.

Under this definition it is possible for nonmajor emitting sources to be constructed in the area after the date of enactment without having their emissions affect the ability of major emitters to use the increment available.

States should avoid allowing emissions from nonmajor emitters to use up the safety margin between the increment and the ambient air quality standards. In addition, care should be taken to assure that the emissions from both nonmajor emitting sources and major emitting facilities do not in total jeopardize the applicable ambient air quality standard. States and the Environmental Protection Agency have a positive responsibility to assure that such ambient air quality standards are maintained, and applicable increments are not exceeded.

Under the EPA regulations, any source which commenced construction prior to January 6, 1975, would have its emissions calculated in the baseline; this aspect of the baseline definition is the same as that provided in the committee reported bill. Under the reported bill, however, the time at which the baseline is established for different areas will depend upon the timing of the first application of a major emitting facility.

The purpose is to use actual air quality data to establish the baseline. Where sufficient actual data are not available, the State may require the applicant to perform whatever monitoring the State believes is necessary to provide that information. This may involve modeling for 12 months or more to establish an annual average.

In calculating the baseline air quality concentration, one caveat is in order. This concerns background particulates levels in rural, arid and semiarid States. Because of the imprecision inherent in the total suspended particulates standards, background dust in such States can cause levels in excess of the particulate standards. Fortunately, the logical dilemma posed by the shortcomings of the present particulates standards can be overcome by administrative good sense until such time as modification of the standards are adopted. The States and EPA have begun to recognize this problem of background particulates and should discount its effects where the problem involves particulates not generally of the substances and respirable sizes thought to affect public health. The Environmental Protection Agency has used this approach in its current policy, and the committee endorses it. In calculating baseline levels for the purposes of the nondeterioration requirements, and in making determination of attainment and nonattainment of ambient particulate standards, the committee would expect that this administrative good sense would apply. This problem, however, should serve as a spur to EPA to expedite its ongoing efforts to make the particulate standards a more precise air quality tool.

Accordingly, the committee recommends that the EPA hold hearings for establishing precise methods of adjusting particulate standards to take into account background particulates of substances and respirable sizes not thought to affect public health and discount such particles from the measurements.